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TO RUEHC/SECSTATE WASHDC IMMEDIATE 8353
INFO RUCNASE/ASEAN MEMBER COLLECTIVE PRIORITY
RUEHXI/LABOR COLLECTIVE PRIORITY
RUEHGV/USMISSION GENEVA PRIORITY 1590

UNCLAS SECTION 01 OF 03 PHNOM PENH 000586

SIPDIS

SENSITIVE
SIPDIS

STATE FOR EAP/MLS, DRL/ILCSR--MARK MITTELHAUSER
GENEVA FOR JOHN CHAMBERLIN
STATE PLEASE PASS TO LABOR FOR ILAB--BILL BRUMFIELD, JIM
SHEA, AND CHRIS WATSON

E.O. 12958: N/A
TAGS: [ELAB](#) [KJUS](#) [PHUM](#) [PGOV](#) [CB](#)
SUBJECT: GUILTY VERDICT UPHELD IN CONTROVERSIAL LABOR
LEADER MURDER TRIAL

REF: A. 04 PHNOM PENH 92

[1](#)B. 04 PHNOM PENH 157
[1](#)C. 04 PHNOM PENH 287

[1](#)1. (SBU) Summary. On April 12, the Appeals Court upheld guilty verdicts against Born Samnang and Sok Sam Oeun, two men accused of assassinating national labor leader Chea Vichea on January 22, 2004. The two men have protested their innocence, and a vocal local and international community of labor and human rights organizations pointed to deficiencies in the investigation and trial and consistently called for their release. Most recently, former King Sihanouk urged that the two men go free. Despite the prosecutor admitting to gaps in his case and asking for further investigation during his closing arguments, the Appeals Court upheld the guilty verdict and the original twenty-year sentences. The outcome has generated intense interest locally and condemnation from international watchdog organizations. End Summary.

Investigation and Original Trial Widely Viewed as Flawed

[1](#)2. (SBU) Local and human rights and labor organizations -- including Amnesty International, Human Rights Watch, and the International Confederation of Free Trade Unions -- have said that Born Samnang and Sok Sam Oeun are scapegoats and have highlighted irregularities in the police investigation and subsequent trial. The case originally came to trial on March 19, 2004 and was dismissed by Judge Heng Thirith due to lack of evidence. The judge, who said in his decision that he had been subject to political pressure to convict the men, was removed from his position at the court; his decision to release the men was overturned; and the two men were convicted by the Appeals Court on August 1, 2005. The prosecutor's case depended largely on confessions from the two defendants, though both recanted. Born Samnang said that he was beaten into confessing, and little corroborating evidence was presented. No eyewitnesses were available to testify. Born Samnang and Sok Sam Oeun were arrested based on their similarities to a police sketch, though the cyclo driver who provided information for the sketch never saw the drawing and could not be located to provide additional information or identify the captured suspects.

[1](#)3. (SBU) Var Sothy, the owner of the newsstand where Chea Vichea was killed and an eyewitness to the murder, was too fearful to cooperate with police initially, and fled to Thailand in March 2006 where she was accorded protective

status from UNHCR. From Thailand, she issued a statement saying that the two defendants were not involved and that the real killers had visited her newsstand one month after the killing, when the defendants were in jail. (Note: Var Sothy relocated to the U.S. in December 2006. End Note.) Defense witnesses who were prepared to offer alibis for the two men were not allowed to testify. The defendants were found guilty and sentenced to 20 years in prison and ordered to pay USD 5,000 to Chea Vichea's family.

Irregularities Continue in Appeals Trial

¶4. (SBU) During the appeals trial, held on April 6, 2007, defense lawyers for the two men presented alibis for the defendants. Defense lawyers for the purported killer, Born Samnang, presented several witnesses who said that he was celebrating the Chinese New Year with his girlfriend and her family who live more than an hour from Phnom Penh. Lawyers for Sok Sam Oeun, the alleged getaway driver, had a harder time making their case as no eyewitnesses were available to verify his whereabouts, though the defendant maintained that he was in a friend's home in a Phnom Penh suburb at the time of the shooting. Both defendants vigorously denied that they were involved in the shooting, and Born Samnang repeated his allegations that police had beaten, coerced, and bribed him in to falsely confessing.

¶5. (SBU) Judges encouraged the defense not to present too many witnesses, and tried to discredit Born Samnang's mother as a character witness. Two members of the three judge panel closed their eyes and appeared to be sleeping at different times during the trial. At one point, one judge was apparently asleep, a second was chatting on a cell phone, while the third was the only one paying attention to the

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trial.

¶6. (SBU) During closing remarks, Sok Sam Oeun's defense lawyer questioned the veracity of the cyclo driver's deposition, and highlighted the newsstand owner's different version of events. Born Samnang's defense lawyer accused the police, specifically then Phnom Penh Municipal Police Chief Heng Pov and Cambodian National Police Commissioner Hok Lundy, of framing the defendants and conducted a media campaign to convince the public of their guilt. In his closing statement, the prosecutor, who was new to the case and had been unusually inactive during the appeals trial, used his closing statement to admit that there were gaps in the investigation process and to ask the court to conduct further investigation and find the "real killers."

Guilty Verdict Upheld

¶7. (SBU) In a very brief session on April 12, the court upheld the guilty verdicts of the two men, crediting the Municipal Court with reaching a correct decision and noting that they did not believe the defense witnesses called on April 6. The defense lawyer for Born Samnang, who was not present when the decision was reached, said that he and Sok Sam Oeun's lawyer planned to take their appeals to the Supreme Court. A staff member from LICADHO, a human rights NGO working as part of a coalition to bring attention to the case, said that they would intensify their campaign to free the two defendants and urge the government to find the real killers. When asked about the possibility of pursuing a pardon from the King, the Executive Director of the Cambodian Defenders Project noted that this would require the defendants (and implicitly, the NGO community rallying around them) to tacitly accept guilt by agreeing to forego an appeal to the Supreme Court and to abandon the goal of finding the true killers. Then the Prime Minister would need to request that the King pardon the pair. Government regulations require that the PM wait until the inmates serve 2/3 of their

sentences before requesting a pardon, though in a few high-profile cases, such as Princes Ranariddh and Sirivudh, this requirement has been waived, he noted.

18. (SBU) Reaction from family members on April 11 was subdued, as they appeared to be simply shocked by the news. In contrast, an angry Sok Sam Oeun said before the appeals hearing on April 6 that the current Cambodian government perpetuated injustice and was no different from the Khmer Rouge. At the conclusion of the April 6 hearing, weeping, shouting family members of the defendants called on the royal family and Cambodia's elected leaders to show the two men mercy and release them.

19. (SBU) International observers, family members, and the human rights and labor communities were deeply disappointed with the verdict and charged that the government had attempted to divert as much attention as possible away from the trial. The original appeals trial set for October 6, 2006 was delayed for six months when one judge was ill with diarrhea. The hearing was re-scheduled for April 6, perhaps timed to minimize the political impact on the April 1 commune elections, and the decision was announced just before the Khmer New Year, a time when Cambodians are traveling, celebrating, and paying little attention to the news. The appeals trial on April 6 was delayed by more than two hours as the court failed to start on time and several routine civil cases were unexpectedly placed ahead of the Chea Vichea murder case. In contrast, at the announcement of the decision on April 11, the court came in to session unusually promptly at 7:30 am -- before the defense lawyers had arrived -- and without notifying many observers and journalists waiting outside that they were beginning. The defendants were not brought from prison to hear the decision announced, leading to speculation that the court was trying to minimize press coverage by not providing a photo-op of the defendants and without the presence of many reporters.

Comment

10. (SBU) While Cambodia has made some strides in improving the Phnom Penh Municipal Court's handling of trafficking in persons cases, this disappointing verdict demonstrates that Cambodia's culture of impunity and poor legal system persist.

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The court's decision comes despite widespread belief that Born Samnang and Sok Sam Oeun are innocent, an NGO-led media campaign to free the pair, and significant questions about the police's handling of the case and the fairness and perfunctory nature of the trials. The UN Human Rights Office staff and the Canadian Ambassador who attended the Appeals Court hearing both opined that Born Samnang's defense lawyer's closing statement blaming senior police officials for the injustice surrounding the case likely worked against any hopes of the two men going free. In 2004, the embassy highlighted problems surrounding this case, and encouraged senior RGC officials at the time to keep the case open and gather more evidence rather than rush to convict the two men.

The court's decision offers little encouragement for efforts to find the killers of other slain union leaders -- Ros Sovannareth in May 2004 and Hy Vuthy in February 2007. End Comment.

MUSSOMELI